IN THE HIGH COURT OF JUDICATURE AT BOMBAY

IN INSOLVENCY

NOTICE OF MOTION NO. 55 OF 2005

IN

INSOLVENCY NOTICE NO. N/26 OF 2005

RE: Narendra Gokani ...Judgment Debtor

Ex-parte :

Famous Cine Laboratories and
Studios Ltd ....Judgment creditor

Mr. R.K. Thakkar for judgment creditor.
Mr. Pankaj R. Thatte for judgment debtor.

CORAM: S.U. KAMDAR, J.

DATED: 18TH APRIL, 2006.

P.C. :

1. The present application is taken out on the ground that the decree passed is an ex-parte decree dated 5.4.1999 and the application was taken out for setting aside the same. The ex-parte decree dated 5.4.2005 was sought to be set aside by Notice of Motion no. 116 of 2000.

The said motion was dismissed for default by an order dated 30.1.2001 passed by the learned single Judge. However by an order dated 12.10.2001 in Notice of Motion no. 2427 of 2001 the said motion was restored and ultimately on 23.3.2004 an order was passed recording the statement of the judgment debtor that he will deposit in court a sum of Rs.3 lacs within a period of 8 weeks. The learned judge had passed an order that if the deposit is made motion to be made absolute and the decree to be set aside. If the amount is not deposited motion to stand dismissed.

2 Admittedly there is no deposit of the amount. However against the order dated 21.3.2004 an appeal was preferred being Appeal (L) No. 504 of 2004. The learned counsel for the judgment debtor withdrew the appeal which has been recorded by the division bench in its order dated 5.8.2004 with liberty to the judgment debtor to apply for review petition. The learned counsel for the judgment debtor states that pursuant thereto an application was made for review of the order being

Review petition no. 5 of 2005. The Review petition was not disposed off and therefore this court by an order dated 7.2.2006 passed in the present notice of Motion gave time on the condition of cost of Rs.5000/- to be paid to the judgment creditor. Today the Review Petition is already disposed off and by an order dated 16.3.2006 the said Review petition has been dismissed. In my opinion once the Review petition having been dismissed the ex-parte decree has stood confirmed by virtue of non-deposit of Rs. 3 lacs. In that light of the matter there is no substance in the present Notice of Motion. Notice of Motion dismissed accordingly. No order as to costs.

sd/-

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